

VERMONT TRANSPORTATION BOARD MEETING JULY 27, 2022

Board Members Present:

David Coen, term expires 2/28/24
Richard Bailey, term expires 2/28/24
Pam Loranger, term expires 2/28/25
Philip Zalinger, term expires 2/28/25
Tim Hayward, term expires 2/28/23
Wendy Harrison, term expires 2/28/25

Board Members Absent:

none

Others Present:

John Zicconi, Board Executive Secretary
Ron Shems, Board Attorney

Call to Order:

Chair David Coen called the July 27, 2022 meeting to order at 11:05 p.m., which was held remotely via Microsoft Teams.

1. NEW BUSINESS

1.1 Review/Approve Minutes of the February, 24, 2022 Meeting

Mr. Zalinger moved and Ms. Loranger seconded that the Board approve the February 24, 2022 minutes as presented. The Board voted to approve unanimously.

1.2 TB-457 Remand of Roback v Washington County Railroad

At 11:06 a.m. the Board on a motion by Mr. Zalinger, seconded by Mr. Bailey and approved unanimously entered into deliberative session, pursuant to Title 1 § 313, to discuss TB-457 Remand of Roback v Washington County Railroad.

Mr. Zicconi and Mr. Shems were invited to join the deliberative session.

At 11:58 the Board emerged from deliberative session.

On a motion by Ms. Harrison, seconded by Ms. Loranger and approved unanimously the Board voted to appoint Board Chair David Coen as hearing officer for all prehearing matters associated with TB-547, a court remand of Roback v Washington County Railroad.

1.3 RLA Permit Protocol

Mr. Zicconi told the Board that before an applicant can apply for a State RLA permit statute requires that the applicant first must obtain municipal approval. But if municipal approval is challenged in court, the Board currently has no policy for when or if the state process can commence. As a result, Mr. Zicconi said he is looking for guidance on whether to accept an RLA application if municipal approval is granted but a legal challenge has been filed by a party other than the applicant, as well as whether to accept an RLA application if municipal approval has been denied but a legal challenge has been filed by the applicant.

Mr. Coen said he believes the Board should accept a permit application if the applicant received municipal approval but that approval has been challenged. The applicant, he said, should be able to proceed before the Board with the caveat that the applicant understand he or she is proceeding at their own peril as any permit the Board may issue will become null and void if the legal challenge to municipal approval is successful.

Mr. Zalinger disagreed, stating that accepting an application when there is an active, legal challenge to municipal approval, thereby setting up a parallel review of the project, does not serve the purpose of administrative efficiency. Ultimately, he added, a judge could remand the case back to the municipality for further review and the municipality even though it first approved the project could upon remand deny it. So if the State of Vermont says a project requires municipal approval the Board should wait to take up its review until the municipal decision is final.

Mr. Shems told the Board that other permitting programs, such as Act 250, allow the permittee to proceed once a permit is issued even if the permit is appealed. The permittee under this scenario can proceed at its own peril. Once the applicant provides documentation that they have town permission, there is no jurisdictional issue if the Board wishes to accept the application and proceed with the state permitting process. But there also is nothing that prevents the Board from telling the applicant it must wait until all appeals are final. It's a matter of choice for the Board, he said. It's a matter of policy.

Mr. Zicconi told the Board he has no preference in how the Board in this circumstance should proceed. But the Board should have a policy, and he is asking for the Board to tell him how it wants to handle an RLA application should there be an appeal of the municipality's decision.

On a motion by Mr. Hayward, seconded by Ms. Loranger the Board voted 5-1 as a matter of policy to allow an RLA applicant to file a state application if it's municipal permit is under appeal. Mr. Zalinger voted against the motion.

The Board with little discussion agreed that the State should not accept an RLA application if a municipality rejects the application for an RLA but the rejection is appealed by the party seeking the permit. The Board did not believe it had to outline a policy under this scenario as Vermont statute already requires that an applicant must have municipal approval before it can apply to the Board for an RLA permit.

1.4 Naming Petition Guidance

Mr. Zicconi told the Board that he has been speaking to a gentleman who would like the State to name a yet-to-be-build terminal building at the Newport State Airport after his deceased father. While the Board has naming authority over state-owned transportation facilities, statute provides no guidance as to whether such a facility has to already exist. In this case, the Agency of Transportation is planning to build the terminal building and has identified its funding, but it does not yet have necessary permits and has not yet put a construction contract out to bid. The question is does the Board want to allow someone to petition the Board to name a facility that does not yet exist, or does the Board want to wait until the building is constructed before it will accept such a petition to name the facility?

Mr. Shems said the Board would be OK deciding either way. In the non-profit world, it is common for a group to name something ahead of it being constructed. But also there is nothing unusual about waiting until something is built. It's entirely up to the Board to set such policy, Mr. Shems said.

Mr. Hayward said the Board should not accept a petition unless the facility already exists. Mr. Zalinger said another way to look at it is the Board will not accept a petition until all permitting is in place or until construction has been initiated. Ms. Harrison said she prefers that the building first be constructed as that gives others more of an opportunity to know that the building is there in case other people are considering proposing other names for the building.

Without taking a formal vote, the Board agreed that it's policy will be that no petition to name a transportation facility that is owned, operated, or maintained by the State of Vermont will be accepted until the facility's construction is complete. Mr. Shems agreed no vote was necessary but encouraged Mr. Zicconi to place the policy into writing that can be shared with anyone who asks.

1.5 Executive Secretary's Report

Mr. Zicconi informed the Board that just last night his office received a request from the Town of Royalton to close a Railroad crossing. He has not yet had time to flush the issue out, but that closing a railroad crossing requires the Board to hold a formal hearing. As a result, the Board should anticipate, probably as early as this fall, that it will travel to Royalton to hold such a hearing.

1.6 Board Railroad Statue Overview

The Board elected not to receive this overview at this time.

2. OLD BUSINESS

2.1 None

3. OTHER BUSINESS

3.1 Round Table

No one had anything to discuss.

4. ADJOURN

On a motion by Ms. Loranger seconded by Ms. Harrison, the Board unanimously voted to adjourn at 12:41 p.m.

Respectfully submitted,

John Zicconi
Executive Secretary

Next Board Meeting: October 6, 2022